IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
LETTERS PATENT APPEAL NO.83 OF 2006
IN
WRIT PETITION NO.3098 OF 1986

The Executive Engineer,
Rehabilitation Division,
Pune Zilla Parishad,
Pune-411 001. .... Appellant

- Versus -

1. Ramchandra Baban Jadhav,
   residing at Ravivar Peth,
   behind Ganapati Mandir,
   At, Post & Taluka Junnar,
   Dist: Pune.

2. The Presiding Officer,
   IVth Labour Court,
   Pune. .... Respondents

Shri S.V. Marne for the Appellant.

Ms Seema Sarnaik for the Respondent (No.1).

CORAM: R.M.S. KHANDEPARKAR &
Mrs. ROSHAN DALVI, JJ.

DATED: JUNE 08, 2006

JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. This appeal arises from the judgment delivered by learned single Judge on 1-8-2002 in Writ Petition No.3098 of 1986.

2. The respondent (No.1) herein was appointed as Peon on temporary basis in the Rehabilitation Department of the Pune Zilla Parishad at Pune under the order dated

10-3-1981, issued by the Executive Engineer of the said Department. The order of appointment discloses that the same shall be for a period of six months. The services of the respondent came to be terminated with effect from 31-5-1982 under the letter dated 15-5-1982. A reference came to be made being Reference No.148/83 to the Labour Court at Pune consequent to the termination of services of the respondent. The contention of the respondent was that his services were terminated without assigning any reason and without holding any inquiry and, therefore, the same was illegal and he was entitled for reinstatement in the services with continuity of services along with back wages till his reinstatement. The proceedings were opposed by the appellant on the ground that the respondent was appointed as Peon purely on temporary basis, without any selection by any State Selection Board, and he was a project affected person and, therefore, the respondent could not make any grievance regarding the termination of his services and he was not entitled for any relief. The Labour Court, however, directed the reinstatement of the respondent as Peon with continuity of services and payment of back wages at the rate of Rs.300/- per month from 1-6-1982 till the date of reinstatement. Being aggrieved, the matter was challenged by the appellant before the learned single Judge. The learned single Judge while dismissing the petition directed the appellant to

reinstate the respondent within four weeks from the date of the impugned order and further to pay back wages at the rate of Rs.300/- per month, as awarded by the Labour Court for the period from 1-6-1982 to 5-12-1985 and thereafter to pay full regular wages till the date of his reinstatement and in addition, to pay cost of Rs.15,000/-.

3. At this stage, it is also necessary to note that the appellant has already employed the respondent with effect from 25-10-2002 and the respondent continues to be in service of the appellant.

4. The grievance in the matter is that the Labour Court could not have ordered reinstatement of the respondent as the respondent was purely on temporary employment and he was not employed as a project affected person, nor he was appointed pursuant to the regular selection by a Selection Committee. Besides, it is also sought to be contended that the services of the respondent were no more required in view of availability of candidate from the category of project affected persons and in terms of the circular issued by the Director of Rehabilitation (Land) Department, 5% of the posts were reserved for the project affected persons. It is further sought to be contended that the learned single Judge having totally ignored this aspect and the Labour Court as well as the

learned single Judge having considered the termination of services on the assumption that the respondent was a regularly appointed employee, the decisions of the learned single Judge as well as the Labour Court have proceeded on the wrong assumption regarding the claim of the respondent and therefore are not maintainable and are liable to be quashed and set aside. On the other hand, it is sought to be contended on behalf of the respondent that there are concurrent findings about the illegal termination of services, on analysis of the materials on record and, therefore, there is no justification for interference therein and in the absence of the appellant disclosing lawful termination of the services of the respondent, no fault can be found with the impugned judgments.

5. Plain reading of the award passed by the Labour Court discloses that the respondent was, undisputedly, appointed as a temporary employee on daily wages. The appointment order dated 10-3-1981 clearly specifies that the appointment was purely for six months. Further, it is not in dispute that the appointment of the respondent was not on regular selection of candidate by the State Selection Board nor the respondent is a project affected person. Once it was established that the appointment was not by following the regular procedure, and besides the appointment letter itself specified that the

appointment was temporary for six months, merely because the respondent continued to render services beyond the period of six months, that cannot enure to the benefit of the respondent to claim permanency. The law on this point is well-settled and it has been clearly ruled by the Apex Court that there cannot be back door entry in the public services. Considering that the Labour Court had clearly erred in directing the reinstatement of the respondent in the services, the learned single Judge also equally erred in confirming the order of reinstatement. Since the respondent was not entitled for reinstatement in service, consequently, there was no occasion for the Labour Court or the learned single Judge to direct the payment of back wages, either at the rate of Rs.300/- per month or full and regular wages after the date of the award.

6. It is also pertinent to note that the Labour Court award merely directed the payment of back wages at the rate of Rs.300/- per month from the date of dismissal i.e., from 1-6-1982 till the date of reinstatement. There was no challenge to the said order by the respondent before the learned single Judge. The challenge was by the appellant to the said award. In such circumstances, the scope of judicial review before the learned single Judge was to the extent of relief granted to the respondent under the award passed by the

Labour Court. In the absence of any grievance being made by the respondent about restricting the back wages to the rate of Rs.300/- per month, there was no occasion for the learned single Judge to modify the order of the Labour Court by awarding full back wages for the period after the passing of the award. The direction in that regard was clearly unwarranted by the learned single Judge in the facts and circumstances of the case.

7. Considering the facts and circumstances of the case, therefore, the appeal is liable to be allowed while setting aside the award passed by the Labour Court as well as the judgment and order passed by the learned single Judge. However, we make it clear that this shall not affect the employment of the respondent in the services of the appellant with effect from 25-10-2002 and dismissal or setting aside of the impugned order by itself would not entitle the appellant to terminate the services of the respondent who has been employed with effect from 25-10-2002.

8. In normal circumstances, the appeal could have been disposed of at this stage itself. However, before parting with the matter, we are constrained to take note of certain observations made by the learned single Judge in the impugned judgment and to pass appropriate order in that regard.

9. It is apparent from the records that the award by the Labour Court was passed on 5-12-1985. The writ petition against the same was filed in the year 1986. After having issued rule therein, when it came up for final hearing on 26-6-1992, as the appellant failed to appear before the Court, the writ petition was dismissed for default on the said day. The respondent, however, did not execute the award even after the dismissal of the writ petition. The appellant thereafter filed an application being Civil Application No.7683 of 1997 for restoration of the writ petition to the board. The learned single Judge (other than the one who has passed the impugned judgment) before whom the matter came up for final hearing, passed the following order on 9-4-2002 on the said application:

> "Heard learned counsel on both sides.
>
> The present Civil Application was filed for setting aside the order dated 26th June 1992 passed by this Court dismissing the writ petition for non-prosecution. No affidavit is filed by the respondent no.1 opposing restoration of the writ petition. In

> view thereof, for the reasons mentioned in civil application, the same is allowed in terms of prayer clauses (a) and (b).
>
> Rule is accordingly made absolute."

The above order clearly discloses that consequent to non-opposition on the part of the respondent No.1 and considering the facts disclosed in the application, the writ petition was restored to the board.

10. While disposing the said writ petition, when it came up before another learned single Judge, and inspite of the fact that the issue relating to the restoration of the writ petition was not the subject matter of judicial review before the said learned single Judge, in a most unusual manner, the learned single Judge proceeded to consider the propriety of the order dated 9-4-2002, passed by another learned single Judge restoring the writ petition to the board. We fail to understand how the same could have been at all considered and dealt with, and that too, in the manner it has been dealt with by the learned single Judge. There are unwarranted and objectionable observations made in the impugned judgment by the learned single

Judge in relation to the order of restoration dated 9-4-2002. Least to say, it was unfair on the part of the learned single Judge to do so. The matter does not end there. The learned single Judge thereupon proceeded to impose costs upon the appellant for getting the order of restoration of the petition after the period of ten years from the date of dismissal of the writ petition. The cost of Rs.15,000/- was sought to be imposed upon the appellant solely on the ground that the application for restoration was allowed without imposing any such cost. It is elementary to note that the order of restoration of the petition was passed in the discretion of the learned single Judge who had passed the said order. Being so, another Judge before whom the matter had come up for hearing on merits and not relating to the point of restoration of the petition, had neither any occasion nor justification to impose any cost for having not imposed the same while ordering restoration of the petition. It was also highly improper for the learned single Judge to observe that the appellant was lucky to get lottery for having secured the order of restoration of the petition. The learned single Judge ought to have considered that he was not sitting in appeal over the order of restoration passed by another learned single Judge.

11. The procedure adopted by the learned single Judge

was totally erroneous, improper and unwarranted. There was no justification for imposition of cost of Rs.15,000/- at the stage of final disposal of the petition in the matter. All the observations in para 6 of the impugned judgment by the learned single Judge in relation to the order dated 9-4-2002 are required to be struck off and the order directing the payment of cost of Rs.15,000/- to be set aside.

12. In the result, the appeal succeeds; the impugned order as well as the award of the Labour Court are quashed and set aside. The observations in para 6 in the impugned judgment and order shall stand struck off from the records. The amount ordered to be paid as cost, if already paid, shall be repaid by the respondent (No.1) to the appellant. Considering the lapse of period from the date of filing of the petition till this day, we, however, are not inclined to order repayment of the amount already paid to the respondent (No.1) by the appellant in terms of the order passed by the Labour Court and confirmed by the learned single Judge, being the interest accrued on the amount deposited in the Court. However, the amount deposited in the Court shall be refundable to the appellant. Order accordingly. No costs.

(Mrs.Roshan Dalvi, J.) (R.M.S.Khandeparkar, J.)

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